IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1021 OF 2005

IN

NOTICE OF MOTION NO. OF 2005

IN

L.C.SUIT NO.4491 OF 2005

ALONG WITH

CIVIL APPLICATION NO.1206 OF 2005

Mars Enterprises & Ors. ...Appellants

Versus

Municipal Corporation of

Brihanmumbai ...Respondent

.....

Mr.V.A.Thorat, Sr.Counsel i/b Jhangiani, Narula & Associates for Appellants.

Mrs.Geeta Joglekar for Respondent.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 23, 2006.

P.C.

1. Heard Counsel for the parties.

2. This Appeal takes exception to the order passed by the City Civil Court at Bombay dated 24th October 2005 refusing to grant ad-interim relief in L.C.Suit No.4491 of 2005 as pressed by the Appellants/Plaintiffs. The Appellants are conducting business of eating house and lodging in the premises in question. The business was commenced in terms of the provisional license issued by the Authority. Request for renewal of license has been rejected by the Authorities on 21st March 2005. Inspite of such refusal, the Appellants/Plaintiffs continued to carry on the business of eating house and lodging. As a consequence, the Respondent Corporation issued notice under Section 394(4) of the Corporation Act. The Appellants have filed Suit questioning the legality of the said notice being L.C. Suit No.4491 of 2005. Insofar as the order dated 21st March 2005 refusing to renew the provisional license is concerned, the Appellants have carried the matter in appeal under Section 47 of the Act, which is stated to be pending before the appropriate authority. In the present Suit, the

ad-interim relief claimed by the Appellants is to restrain the Defendants, their servants, agents, representatives and/or person or persons claiming through or under them from taking action pursuant to notice under Section 394(4) of the Corporation Act dated 20th October 2005. The Trial Court has declined to grant ad-interim relief on the reasoning that without license, the Appellants cannot be permitted to run the hotel and restaurant as the Appellants have no legal right to do such business without license. The Trial Court has observed that no prima facie case for granting ad-interim relief was made out, for which reason, that prayer was rejected.

3. The first contention of Mr.Thorat is that the notice which is subject matter in the suit is under Section 394(4) of the Act. Section 394(4) of the Act makes no reference to taking proposed action for want of valid license. But can be invoked only in the circumstances provided therein, namely, keeping of any article or animal or the carrying on of any trade, process or operation, in or upon any premises, is dangerous or likely to

create a nuisance within the meaning of clause (d) of paragraph (ii) of clause (e), of sub-section (1).

4. It is not possible to countenance this submission. This is so because Section 394 will have to be in the first place read as a whole, which pertains to certain articles or animal not to be kept, and certain trades, processes and operations not to be carried on, without a license; and things liable to be seized, destroyed, etc. to prevent danger or nuisance. Sub-section (4) of Section 394 presupposes that the activity in or upon a premises was being carried out with license. If it is a case of without license, it cannot stand on a better footing, but still would be covered by the expansive provision therein. Learned Counsel for the Respondent points out that the provisional license was valid only till August 2004 and not thereafter.

5. Suffice it to observe that the Court below was right in taking the view that if there was no valid license in favour of the Appellants, the

Appellants were not authorised to carry out the activities of hotel and restaurant and no prima facie case for grant of ad-interim was made out. Mr.Thorat placed reliance on the decision of this Court reported in **2001 (3) BCR 425 in the case of M.G.Sarasappa Kurup vs. Municipal Corporation of Greater Bombay & Ors.**, to contend that the Appellants had no valid license will have to be viewed as extraneous consideration weighed with the authorities while issuance of notice under Section 394 (4) of the Act. I am unable to accept this submission. I have already recorded my opinion that even where the activity in or upon the premises is to be carried out without license, action under Section 394(4) may be an appropriate action. The reported decision in my opinion is not an authority on the issue that arises for my consideration at the ad-interim stage. Accordingly, I see no merits in the present Appeal.

6. Mr.Thorat would then contend that Section 47 appeal is likely to be decided within one week’s time and till such time, the interim protection granted by this Court should be continued.

Accepting this submission, would be inconsistent with the view which I have already taken earlier that if the person is carrying on activity without valid license, it is open to the authority to proceed against such person in terms of Section 394 of the Act. Accordingly, even this submission does not commend to me. Hence, this appeal fails. The same is dismissed.

7. In view of the above order, Civil Application also stands disposed of.

A.M.KHANWILKAR, J.